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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Shimpei MIURA

Group Art Unit: 1795

Application No.: 10/585,347

Examiner: J. MAPLES

Filed: July 27, 2006

Docket No.: 128621

For: FUEL CELL SYSTEM AND FUEL GAS CONTROL METHOD

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the July 14, 2009 Election of Species Requirement, Applicant provisionally elects the species of Claim 3 from Group I and the species of Claim 4 from Group II, with traverse. Claims 1 and 10 are generic and claims 3 and 4 read on the elected species.

It is alleged that there is lack of Unity of Invention under PCT Rule 13.1 and lack of a special technical feature under PCT Rule 13.2. Applicants respectfully disagree.

First, in PCT U.S. National Stage Applications, Unity of Invention objections should only be applied to independent claims unless unpatentability of the independent claims has been established. In this regard, it is admitted that independent claims 1 and 10 are generic.

Second, under PCT Rule 13.4, a reasonable number of dependent claims shall be permitted, even where the features could be considered as constituting in themselves an invention. Eight dependent claims is considered a reasonable number.

Finally, it has been alleged that the species do not share a special technical feature under PCT Rule 13.2. However, all include the common features of independent claim 1.

There is no evidence of record that the features of independent claim 1 do not form special technical features under PCT Rule 13.2. Therefore, the Election of Species Requirement is improper.

It is also respectfully submitted that the subject matter of all species is sufficiently related that a thorough search for the subject matter of any one species would encompass a search for the subject matter of the remaining species. Thus, it is respectfully submitted that the search and examination of the entire application could be made without serious burden. See MPEP §803 in which it is stated that "if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions" (emphasis added). It is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office.

Thus, withdrawal of the Election of Species Requirement is respectfully requested.

Respectfully submitted,



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Date: August 10, 2009

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